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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

SEP 28 2001

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Revision of the Commission's Rules to)
 Ensure Compatibility with Enhanced 911)
 Emergency Calling Systems)

CC Docket 94-102

To: Chief, Wireless Telecommunications Bureau

**PETITION OF NORTHCOAST COMMUNICATIONS, L.L.C.
FOR WAIVER OF PHASE II E911 DEPLOYMENT REQUIREMENTS**

Northcoast Communications, L.L.C. ("Northcoast"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Federal Communications Commission's ("FCC") rules, and the *Fourth Memorandum Opinion and Order*¹ in this docket, respectfully requests a limited waiver of the Phase II enhanced 911 ("E911") location accuracy requirements of Section 20.18(g) of the FCC's rules.² Specifically, Northcoast seeks a waiver of the requirement that carriers selecting a handset-based Phase II E911 solution follow a phased-in implementation schedule beginning October 1, 2001. As explained below, like virtually all other CMRS carriers, Northcoast has been unable to obtain firm commitments from its network and handset suppliers that would allow it to deploy Phase II-compliant handsets in accordance with the Commission's Phase II rules.

¹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442 (2000) ("*Fourth MO&O*").

² Northcoast, through its subsidiaries, holds 49 broadband PCS licenses in midwest and northeast markets. Northcoast launched CMRS operations in its first market, Cleveland, in April 2001. The PCS license for the Cleveland market is held by Northcoast's wholly owned subsidiary, Cleveland Holding, LLC. Northcoast intends to launch PCS service in several northeast markets, including markets where the licenses are held by other Northcoast subsidiaries, during 4Q 2001 and 1Q 2002. Consequently, this waiver request applies to Northcoast, and all Northcoast subsidiaries, that are operating PCS systems before Northcoast's vendors provide it with Phase II E911 compliant technology.

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Northcoast therefore proposes a modified schedule that will allow the deployment of location-capable handsets to start in the fourth quarter of 2002, as opposed to the current October 1, 2001 deadline. For the reasons discussed below, Northcoast submits that a grant of its limited waiver request would serve the public interest.

I. BACKGROUND

As mentioned above, Northcoast participated in the FCC's Auction No. 11 as a qualified very small business Designated Entity, and in 1997, Northcoast was awarded 49 D, E and F block 10 MHz licenses to provide broadband PCS in various northeast and midwest markets. After a long and often difficult road, Northcoast launched service in its first market, Cleveland, this past spring. Already, Northcoast has over 25,000 subscribers for its flat rate local calling service. Northcoast also plans to launch various markets in the northeast by the end of 2001 and in early 2002. Earlier this year, Northcoast also participated in Auction 35, and was the high bidder in eleven markets that supplement Northcoast's service footprint.³

Pursuant to Section 20.18(g)(1) of the Commission's E911 rules, CMRS carriers selecting a handset or hybrid solution to the Phase II E911 obligation must begin selling and activating location-capable handsets by October 1, 2001, regardless of whether a valid PSAP request has been received.⁴ The rules further require these carriers to ensure that at least 25% of new handset activations be location capable by December 31, 2001; that 50% of handset activations be location-capable by June 30, 2002; that 100% of new digital handset activations be location-capable by December 31, 2002; and that 95% penetration of location-capable handsets be achieved by December 31, 2005. It has always been Northcoast's intention to fully comply

³ Northcoast's Form 601 for these 11 markets has not yet been granted.

⁴ To date, Northcoast has not yet received a valid Phase II request from any PSAP in its Cleveland market.

with the Commission's Phase II E911 requirements. Indeed, given that Northcoast has just launched service in its first market using the latest Lucent equipment and CDMA technology, Northcoast had assumed that it would not face the E911 issues that its CMRS counterparts have been confronting over the past several years.

In November 2000, Northcoast notified the FCC of its intent to deploy a GPS handset-based Phase II E911 solution, initially using Qualcomm MSM3300 series chipsets in the GPS handsets. Northcoast had investigated both network and handset-based solutions, and concluded that network-based solutions are impractical for its networks. Northcoast's research indicates that the reliability of network-based solutions are questionable, even under the best of circumstances. In addition, the available or proposed network-based solutions are difficult and expensive to install, and would be far less accurate than handset-based solutions. Therefore, Northcoast decided to provide Phase II E911 service to its customers through a handset-based solution. However, in recent months, Northcoast has found that it will be impossible for Northcoast to obtain and implement the software and hardware upgrades, and ALI-capable handsets, in time to meet the Commission's implementation deadlines.

II. GRANT OF THE REQUESTED WAIVER IS JUSTIFIED

Generally, a waiver of the Commission's rules will be granted if it is in the public interest or if there are unique factual circumstances that would render the application of a particular rule inequitable or unduly burdensome.⁵ In its *Fourth M&O*, the Commission explained that in the E911 context, there may be some instances where petitions for waiver of the Phase II E911 rules will be necessary, particularly if there are "technology-related issues" or "exceptional

⁵ 47 C.F.R. §§1.3, 1.925; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

circumstances" that are preventing deployment of such services.⁶ These types of waiver requests should be "specific, focused and limited in scope, and with a clear path to compliance."⁷

Unfortunately, as a new, small business CMRS carrier, Northcoast does not have the market power to influence or control the development and deployment schedules of the Phase II E911 equipment manufacturers, which has led to the present, significant technology issue. Presently, there is a lack of Phase II software, hardware and handsets needed to comply with the FCC's Phase II 911 requirements for handset-based technologies. Consequently, Northcoast has no choice but to request a limited waiver of Section 20.18(e), (g)(1) and (g)(2) of the FCC's rules.⁸

A. Network-Based E911 Solutions are Not Suitable for Northcoast's Markets

Before Northcoast decided that it would use a handset-based solution for its markets, Northcoast and its consultants studied and considered a variety of network-based alternatives for Phase II compliance. Northcoast ultimately determined that network-based solutions would not work well in its markets. First, as the Commission has been advised by numerous carriers in this docket, significant questions still remain about the accuracy of network-based Phase E911 solutions, and whether network solutions will meet the FCC's Phase II E911 requirements.⁹ Indeed, it appears that even the Commission has recognized that network solutions are less accurate than handset solutions, by adopting more stringent accuracy standards for handset-based solutions than for network solutions. In fact, the record in this proceeding contains the test

⁶ *Fourth M&O* at ¶ 43.

⁷ *Id.* at ¶ 44.

⁸ This waiver is limited in that Northcoast believes that it will be able to comply with the Section 20.18(g)(1)(v) requirement to achieve 95 percent penetration of location-capable handsets among its subscribers by the December 31, 2005 deadline.

⁹ *See, e.g.,* Leap Wireless International, Inc. Petition for Partial Waiver of Phase II Implementation Milestones, filed August 23, 2001; Response of Nextel Communications, Inc. and Nextel Partners, Inc. to Order of the Wireless Telecommunications Bureau, filed May 21, 2001.

results and findings of many of the largest, nationwide CMRS carriers, which establish the superior accuracy of handset-based solutions.

Second, all of the network-based solutions that Northcoast investigated would require significant, recurring capital expenditures for each market. Deployment of any Phase II solution requires network upgrades of base stations, switches and other vendor software and equipment. Because Northcoast is now in the process of either launching or constructing its initial markets, and because neither network based or handset based Phase II E911 technology for CDMA systems is ready for commercial deployment, Northcoast logically has decided to stay with its previously announced decision to implement a handset based solution. As a designated entity that just launched CMRS in its first market in an very competitive industry, it is both reasonable and prudent for Northcoast to avoid the significant cost outlays that would be required of a network based system, especially when other, more technologically attractive alternatives are available. Consequently, Northcoast determined that a network solution would be impractical, expensive to deploy, and most importantly, far less accurate in its markets than handset-based solutions.

B. Handset-Based Solutions Will Not Be Available by the October 1, 2001 Deadline

As the Commission is now well aware, no handset manufacturer is expected to have ALI-compliant handsets on the market in time to meet the Commission's initial Phase II E911 phase-in deadlines. In addition, as explained above, handset availability is only one part of the Phase II solution deployment equation. For its Cleveland market, Northcoast has contracted with Lucent Technologies ("Lucent") for network vendor services. On August 30, 2001, Lucent advised the Commission in this proceeding that "due to the complexity of the solutions and the need for complete testing between handset, switch and other vendor software and equipment, no

manufacturer, including Lucent, has an E911 solution that will be commercially available in time for carriers to meet the current Phase II deadline.”¹⁰ Lucent also stated that “no manufacturer currently has a generally available E911 Phase II solution, so carriers cannot deploy them in time to meet the deadline”, and that a “carrier simply cannot implement a solution before it is available.”¹¹

While all interested parties obviously wish that Phase II E911 technology development and deployment was further along, it is an extremely unfortunate fact that this is not the case. The Commission has been fully briefed on this industry-wide dilemma, and Northcoast’s waiver request is not unique. Consequently, Northcoast urges the Commission to take into account marketplace and technological realities, realities over which CMRS carriers like Northcoast clearly have no control, when reviewing Northcoast’s waiver request.¹²

C. Grant of the Requested Waiver is in the Public Interest

The public policy behind the Commission's E911 rules is to meet important public safety needs as quickly as reasonably possible.¹³ Given the circumstances, allowing Northcoast, and other similarly situated CMRS carriers, to introduce ALI-capable handsets on a more graduated schedule would serve this objective. As the Commission has recognized, any delays resulting from a phased-in handset-based approach would likely be offset by the increased accuracy of

¹⁰ See Exhibit A, Letter to Magalie Salas in CC Docket 94-102, from Dian Law Hsu, Corporate Counsel for Lucent Technologies, dated August 30, 2001.

¹¹ *Id.*

¹² Also relevant is the fact that the Commission previously has waived compliance deadlines for licensees when product manufacturers, rather than licensees themselves, cannot produce the requisite product within the mandated timeframe. See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, First Report and Order, 9 FCC Rcd 1981, ¶¶ 76-77 (1994) (compliant cable boxes not available from equipment makers).

¹³ See *Fourth MO&O* at ¶ 6.

such solutions.¹⁴ In addition to allowing Northcoast to provide superior location accuracy when the solution is implemented, the proposed implementation schedule would have no appreciable effect on the availability of Phase II E911 in Northcoast's markets. While Northcoast will be responsive to all PSAP requests, the marginal public-interest benefit of introducing location-based handsets by the third quarter of 2002 rather than October 1, 2001, would be minimal, especially given the fact that Northcoast has not yet received any Phase II requests from PSAPs. Under these circumstances, the compliance schedule proposed by Northcoast allows for an expeditious yet sensible phase-in of Northcoast's handset solution.

III. PROPOSED COMPLIANCE SCHEDULE

With this petition, Northcoast is not requesting a "broad, generalized waiver",¹⁵ or an indefinite extension. Rather, as detailed below, Northcoast is proposing a realistic, alternative schedule that will lead it to "a clear path of compliance".¹⁶ Indeed, while Northcoast is requesting a waiver of the first few Phase II E911 implementation deadlines, it also proposes to meet the final 95% handset penetration benchmark set for December 31, 2005. Specifically, Northcoast's proposed revised implementation schedule is as follows: Northcoast would begin selling and activating ALI-capable handsets by the third quarter of 2002, rather than October 1, 2001¹⁷; the date for the 25% benchmark would be extended to the fourth quarter of 2002; the date for the 50% benchmark would be extended to the second quarter of 2003, and the date for

¹⁴ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket 94-102, Third Report and Order, 14 FCC Rcd 17388, 17403 (1999) ("*Third Report and Order*") ("Moreover, to the extent that a phase-in might delay [automatic location identification] implementation, handset-based solutions may well generate offsetting benefits. For example, it appears that handset-based solutions may achieve greater accuracy.")

¹⁵ *Fourth MO&O* at ¶ 44.

¹⁶ *Id.*

¹⁷ Northcoast expects to receive its first shipment of ALI-capable handsets through Audiovox Corp. by June 1, 2002.

the 100% benchmark would be extended to the fourth quarter of 2003.¹⁸ As mentioned above, Northcoast is not seeking a waiver of the Section 20.18(g)(1)(v) requirement that CMRS carriers achieve 95% penetration of ALI-capable handsets by December 31, 2005. Because Northcoast is a new carrier, and because it hopes to begin making ALI-capable handsets available within the next 10-12 months, the relative number of handsets ultimately sold in Northcoast markets that will not be compatible with Northcoast's Phase II solution should be relatively minimal.

In crafting this revised schedule, Northcoast has tried to incorporate realistic equipment General Availability ("GA") projections and network realities, while also fully recognizing the public interest need to deploy Phase II technology as rapidly as possible. Given Lucent's stated software and hardware GA dates, and need to perform field trials and testing before activating the Phase II E911 technology,¹⁹ Northcoast believes that its proposed schedule is responsive to these competing needs.

IV. CONCLUSION

It is an unfortunate fact that virtually the entire CMRS industry will be unable to comply with the Commission Phase II E911 rules. Clearly, no carrier wants to be in the position where it needs to request a waiver to implement rules that serve such an important public interest goal. However, carriers like Northcoast have no control over vendor production and distribution

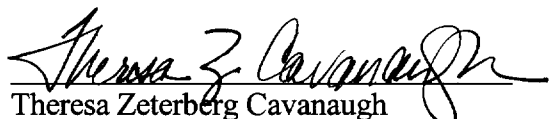
¹⁸ Obviously, Northcoast's ability to live up to these revised deadlines is based in large part on Northcoast being able to obtain the ALI-capable handsets from its handset vendors in a timely manner.

¹⁹ See Exhibit A – Letter from Nortel Networks, at p.2. ("Nortel Networks endorses an end-to-end field trial before amore extensive roll-out of the E911 technology takes place. The end-to-end filed trial is important because, to address the overall goal of the delivery of location information to a PSAP, the E911 technology must successfully interwork with the E911 components ... supplied by other necessary parties, such as the location technology provider and the Local Exchange carrier.")

schedules of Phase II E911 equipment. Consequently, Northcoast has developed an alternative implementation proposal that is limited in scope, and presents the Commission with a clear path to Northcoast's full compliance of the Phase II E911 obligations. For the reasons set forth above, Northcoast requests a waiver of Section 20.18(g) of the rules as described herein.

Respectfully submitted,
Northcoast Communications, L.L.C.

By:



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September 28, 2001

EXHIBIT A



August 30, 2001

Ms. Magalie Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911
Emergency Calling Systems, CC Docket 94-102

Dear Ms. Salas:

Lucent Technologies supports the Commission's decision to impose 911 location information requirements, because we share the Commission's belief that the provision of 911 location information for wireless callers to public safety agencies may save lives. Accordingly, Lucent is committed to developing E911 solutions that provide accurate location information as expeditiously as possible.

However due to the complexity of the solutions and the need for complete testing between handset, switch and other vendor software and equipment, no manufacturer, including Lucent, has an E911 solution that will be commercially available in time for carriers to meet the current phase ii deadline. Several of Lucent's customers, including Alltel, AT&T Wireless, Cingular, Corr Wireless, Nextel, Qwest Wireless, Sprint PCS, Telcorp, USC, and Verizon Wireless have recently requested extensions of the E911 phase ii deadlines. Their filings present a consistent message; no manufacturer currently has a generally available E911 phase ii solution, so carriers cannot deploy them in time to meet the deadline.

In light of the realities of the marketplace, Lucent strongly supports all of its carrier customer's requests for extension. A carrier simply cannot implement a solution before it is available. Therefore, Lucent urges the Commission to grant individual extensions that take into account the planned availability dates and the carriers' ability to test and deploy solutions once they become available. Any such extension must also provide some flexibility in the event targeted availability dates are compromised. Lucent reiterates, however, that it will continue to work diligently to make available its E911 solutions as quickly as possible and will keep its customers apprised of our progress.

Sincerely,

Diane Law Hsu
Corporate Counsel